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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,805	01/22/2002	Hugo Pimienta	02600.911	7420

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EXAMINER	
MOSSER, ROBERT E	

ART UNIT	PAPER NUMBER
3714	

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/055,805	PIMIENTA, HUGO	
	Examiner	Art Unit	
	Robert Mosser	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 January 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-18,20-35,37-50 and 52* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-18,20-35,37-50, 52* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

♦

Responsive to the RCE filed January 6th, 2005.

1, 3-18, 20-35, 37-50, and 52 are pending.

Examiner's statements regarding old and well known subject matter and Official Notice as presented in the office action mailed October 6th, 2003 were not addressed in the reply by applicant and are now considered admitted prior art.

This action is non-Final.

♦

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 6th, 2005 has been entered.

Claim Rejections - 35 USC § 112 1st

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims **1, 3-18, 20-35, 37-50,** and **52**, are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a non-prediction based binary chance game between an odd number of players equal to three or greater, does not reasonably provide enablement for use of player predicted outcomes in non-binary chance games or any number of players greater then one in a non-binary game. The specification does not enable a person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims, without undue experimentation.

The specification as filed discusses the inclusion of multiple players in a chance game which may include "multiple coin tosses", however there is no related discussion in the specification regarding the claimed "predicted outcome" with regards to the multi-player embodiment.

Further in the case where the outcome of the chance game is not a binary outcome (i.e. a coin toss or derivative thereof) it is possible for multiple players to each have unique results thereby not allowing the occurrence of a minority result. Per instance if there was a six sided die rolled three times to simulate outcomes based on three individual players the results of 2-3-4 and 2-3-5 are not addressed in the specification and it is unclear how the game would resolve the issue. The first full paragraph on page 23 of the specification only addresses one instance during a binary event wherein the outcome may be predetermined if the result is the same. In the above examples the results are clearly different hence not enabled.

Claim Rejections - 35 USC § 112 2nd

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims **1, 3-18, 20-35, 37-50,** and **52** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically claim **1** further states the use an "odd triality result" it is unclear what result the applicant would consider the odd result in the use of the claimed invention between an "odd triality" of players since they have not limited the number predicted outcomes to be commensurate in scope with the example provided on page 23 of the specification (i.e. if two players both achieved different results out of six possible results). Further it is unclear how the applicant intends the players to place a wager on a predicted outcome (wherein as understood if the prediction is correct they are rewarded with a win) while at the same time declaring a winner based on an odd minority result that may be independent of a true prediction. The applicant has provided an example wherein the user predicts that they will win however the claim as presented would not require such an action on part of the user nor is it suggested by the specification as filed hence the example provided in the arguments submitted January 6th, 2005. The issue is further exasperated on lines 14 and 15 of claim 1 for example, wherein the applicant presents that the "determination" of a winner and the

determination of said winner. The winner entity is repeated with separate functions and hence determine base on two separate criteria not reliant each other while serving proper antecedent basis between the two lines. The claims further allow for the determination of "a winner" and not multiple "winners" wherein (even under the argued claim interpretation) a minority result associated with 2 of 9 players (by way of example) would yield multiple winners not provided for by the claim language set forth. As best understood the applicant intends the lesser-chosen prediction to be the winning result and then declare the players whom choose the lesser-chosen prediction to be declared the winners.

Claim **18** contains the same issues as recited above with regard to claim **1** including the determination of a winner and an odd result as set forth above.

Claim **35** contains the same issue as presented above with regard to claim **1** including the determination of a winner.

Remaining claims not directly addressed herein are incorporated through dependency.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims **1, 3-4, 7, 9, 18, 20-21, 24, 26, 35, 37, 39** and **41** are rejected under 35 U.S.C. 102(e) as being anticipated by ***Cummings*** et al (6,183,361).

Regarding claims **1-4, 7, 9, 18-21, 24, 26, 35-37, 39,** and **41**, Cummings teaches a computerized gaming apparatus/method that comprises a processor; a memory coupled to the processor (Fig. 3); a gaming engine configured to interface with a gaming interface via an interconnection fabric, said gaming engine configured to obtain a wager from a players; obtain a predicted outcome from the players; simulate a random chance event by executing a random number generator when said gaming engine has obtained said wager and said predicted outcome; obtain an actual simulated outcome of said random chance event using output generated by said random number generator; inform said players of a win if said predicted outcome matches said actual outcome (Fig. 1; Fig. 4; col. 6,lines 11-67 through col. 7, lines 1-4).

Newly amended subject matter directed to an "odd triality" of players is encompassed in the broader plurality of players previously demonstrated in the abstract and figure 1 of Cummings.

The random number generator execution on a gaming engine separate from the interface is considered encompassed in the random number generator located on the server as shown in figure 3 of Cummings.

The selection of a winner based on the actual event outcome and the charging of a variable game fee or the establishment 's share as equivalently described is presented in at least the abstract of Cummings.

Newly amended subject matter directed to the "odd minority result" determining the winner has been interpreted as referring to the winner of the Cummings as the applicant has not set forth any claim structure that would presently support the present definition of an "odd minority result" as set forth in the specification.

The subject matter including the charging of a game fee amount is taught in Cummings as a house share (Abstract)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims **5-6, 8, 10-11, 13-17, 22-23, 25, 27-28, 30-34, 38, 40, 42-43** and **45-49** are rejected under 35 U.S.C. 103(a) as being unpatentable over ***Cummings*** et al (6,183,361).

Regarding claims **5** and **22**, Cummings teaches all the limitations of the claims. Cummings is silent regarding the feature of the wager comprising credits earned by the player for performing an action. The examiner has previously taken notice that it is well known in the art in lottery/slot gaming to allow players to wager previously won credits

and this feature is now considered applicant admitted prior art. It would have been obvious to a person of ordinary skill in the art at the time of the invention to include this feature in Cummings to provide an additional incentive for the players to continue game play; thereby, increasing the profits for the gaming establishment.

Regarding claims **6, 23,** and **38**, Cummings teaches all the limitations of the claims as discussed above. While Cummings teaches the feature of a wager, Cummings lacks teaching the use of fun money for the wager. As previously stated it is well known in the gaming art to use play money (in such games as Monopoly™, Operation™, etc.) this feature was previously presented and is now considered applicant admitted prior art. It would have been obvious to a person of ordinary skill in the art at the time of the invention to utilize play money instead of actual money in Cummings to increase the excitement and decrease disappointment for players that are new to the game.

Regarding claims **8, 25,** and **40**, Cummings teaches all the limitations of the claims as discussed above. Cummings lacks the explicit disclosure of deactivating the play button when the wager is above a certain threshold. Cummings is functionally capable of achieving this function. It is merely a matter of programming the gaming software to start/stop game play when a certain wager is received. It would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate this feature into Cummings in order to prevent players from wagering and losing excessive amounts of money. This would increase player satisfaction after playing the game.

Regarding claims **10, 27,** and **42**, Cummings teaches all the limitations of the claims as discussed above. Cummings is silent regarding the explicit teaching of an animation window for displaying a visual depiction of the random event simulated by the random number generator. The examiner has previously taken notice that it is well known in the art of gaming devices to display various animations in order to attract the player's attention. Therefore, for this reason it would have been obvious to a person of ordinary skill in the art at the time of the invention to include this feature in Cummings.

Regarding claims **11, 17, 28, 34, 43,** and **49,** Cummings teaches all the limitations of the claims as discussed above. Cummings is silent regarding the random chance event being binary. However, the examiner has previously taken notice that this is a well known feature in random chance card games, whereby the player wagers on whether the outcome will be hi or lo and this feature is now considered applicant admitted prior art. It would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate this binary feature in Cummings to increase the odds of the players choosing a winning outcome.

Regarding claims **13-16, 30-33**, and **45-48**, Cummings teaches all the limitations of the claims as discussed above. Cummings is silent regarding the feature of deducting a game fee. The examiner has previously taken notice that it is well known in the art of network gaming to charge and deduct a game fee (particularly in network tournament type games) and this feature is now considered applicant admitted prior art. It would have been obvious to a person of ordinary skill in the art at the time of the

invention to incorporate the feature of deducting a game fee in Cummings to increase the profits of the gaming establishment.

Claims **12, 29, 44, 50**, and **52** are rejected under 35 U.S.C. 103(a) as being unpatentable over ***Cummings et al*** (6,183,361). et al in view of ***Gutknecht*** (5,154,420).

Regarding claims **12, 29, 44** and **50-52**, Cummings teaches all the limitations of the claims as discussed above. Cummings lacks the disclosure of the random event being simulated coin flips. In an analogous random chance game, Gutknecht teaches this feature (abstract; Fig. 1, #52). It would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate this feature, as taught by Gutknecht, in Cummings to increase the familiarity of the game for players; thereby, increasing player participation.

Response to Remarks/Arguments

The applicant's remarks of January 6th, 2005 present the language of an "odd triality" and "odd minority" result in view of a particular example. While the claim language could read on such an example, the language is also broader then the presented example. The outcome as determined by the random number generator is not so limited as to include only a binary (heads or tails result) and thus fails to enable those circumstances wherein it is not.

The claims still present two separate and distinct means for determining a winner not supported in combination by the specification. This winner is presented as singular and fails to address the circumstance where there could be more then one winner in a game through either a singular or multiple winning determinations. Further the specification also appears to only reference a singular winner that appears to contradict the presently present method of winner determination. Applicant's arguments to the contra are narrower then the present claim language and presented in the form of a singular example.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 5,098,107 teaches a card wagering game.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Mosser whose telephone number is (571)-272-4451. The examiner can normally be reached on 8:30-4:30 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H Banks can be reached on (571)272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

REM

JESSICA HARRISON
PRIMARY EXAMINER